

Supreme Court of the United States

OCTOBER TERM 1944

John W. Hays and Sarah R. Hays,

Petitioners,

CHARLES F. HAYES, PARKER M. WOOD, JR.,
LEON L. HAYES, WALTER M. WOOD, JR.,
LEONARD R. WOOD,

Petition for Writ of Certiorari
Supreme Court of Minnesota

JOHN W. HAYS and
SARAH R. HAYS, Petitioners

by GEO. D. WADSWORTH,

Attala County, Mississippi

CHARLES R. HAYES,
Gainesville, Mississippi

14281

22/1/46



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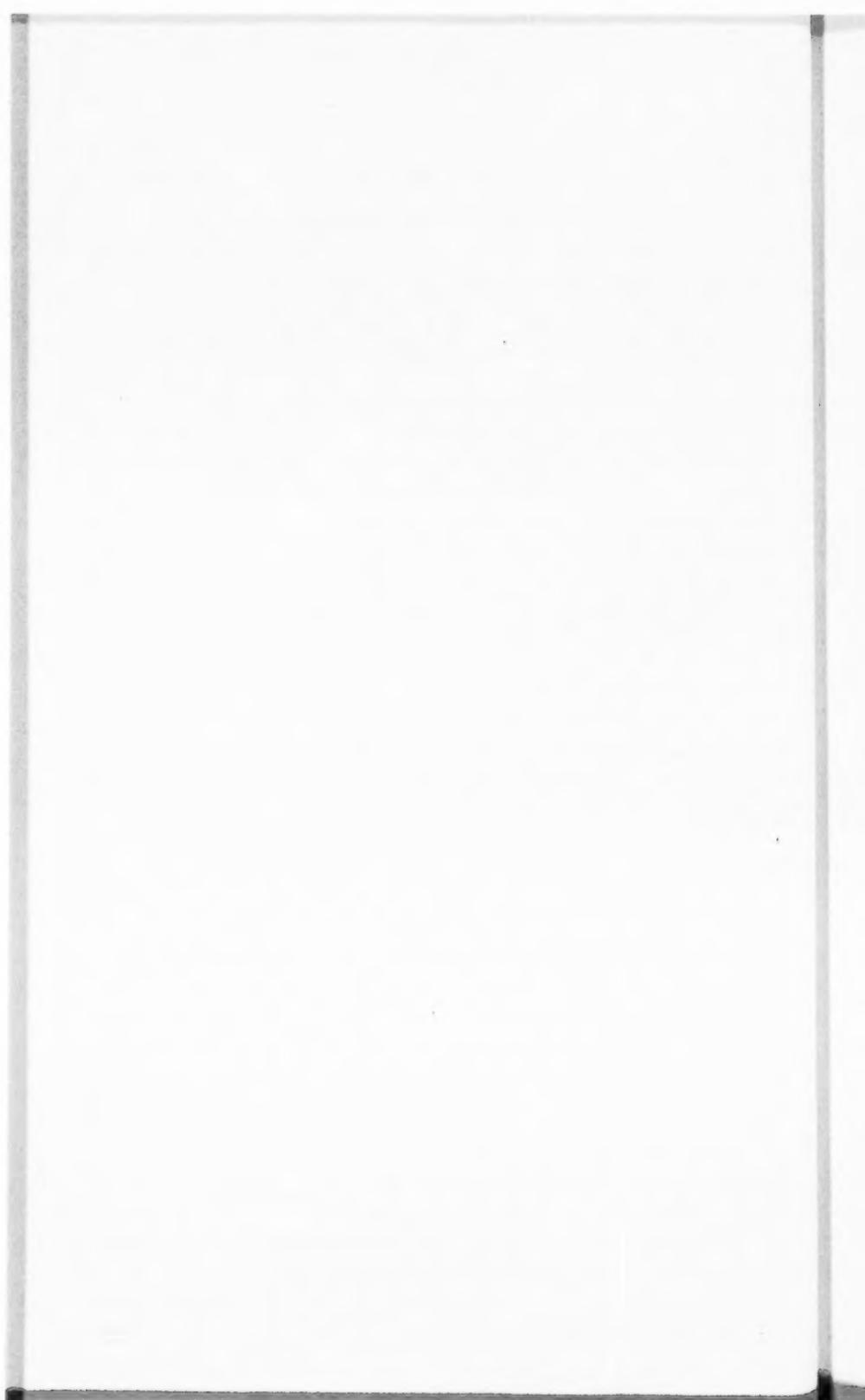
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In the
Supreme Court of the United States

OCTOBER TERM, 1944

JOHN W. HAYS and SARAH R. HAYS, *Petitioners.*
vs. *No.*
CATHERINE FARRINGTON, PARKER M. WOOD, WIL-
LIAM L. BECKTOLD, WALTER M. WARREN and
LYMAN E. WARREN, *Respondents.*

*Petition for Writ of Certiorari to
Supreme Court of Missouri*

PETITION FOR CERTIORARI.

To the Honorable Supreme Court of the United States:

Your petitioners, John W. Hays and Sarah R. Hays, respectfully allege:

A.

Summary Statement of the Matter Involved.

Petitioners, citizens and taxpayers of Missouri, residents in the City of St. Louis, were the owners by the entirety of the undivided and unsurveyed western two and one-half acres of a certain tract of land, situated on Big Bend Road, in the town of Kirkwood, St. Louis County, in said state on the 20th day of December, 1940, by reason of a certain written agreement set forth on pages 137 and 138 of the Record in Cause No. 38911 of the Supreme Court of Missouri and entitled Catherine Farrington, Parker M. Wood, William L. Becktold, Walter M. Warren and Lyman E. Warren, respondents, v. John W. Hays and Sarah R. Hays, appellants; that Loyal M. Burton and Rosalyn R. Burton, his wife, were on said date the owners by the entirety of the eastern two and one-half acres of said tract of land by reason of the aforesaid written agreement; that on said 20th day of December the legal title to the whole of said tract of land was in the name of one Marie Halbrecht, and on the 6th day of January, 1941, said Marie Halbrecht, at the direction of petitioner, John W. Hays, inserted the names of said Loyal M. Burton and Rosalyn R. Burton, his wife, in a blank deed which she had executed and delivered to the petitioner, John W. Hays, on the 16th day of December, 1940, the date when the legal title to said property was, by deed from the original owners thereof, first placed in her name. She delivered said blank deed to said petitioner, pursuant to a written assignment theretofore executed and signed by one Harry J. Gannon and said Marie Halbrecht, conveying the interest of said Harry J. Gannon in said tract of land, to petitioner, John W. Hays, who was already the beneficial owner of a one-half un-

divided interest therein; but said deed was not placed of record until the morning of February 3, 1941.

That on the 3rd day of February, 1941, the other respondents herein, acting through their duly authorized agents, entered into a written contract with said Harry J. Gannon and Marie Halbrecht for the purchase of said tract of land, in the name of respondent, Catherine Farrington, well knowing at the said time through information theretofore given to their said agents that said Marie Halbrecht was not the real owner of said lands and that said Harry J. Gannon and said Marie Halbrecht had no authority to make and sign said contract; and, at the time of the signing of said purchase or earnest money contract, all of said respondents, through other facts known to their said agents, could have learned by reasonable inquiry that the petitioners herein and said Lloyal M. Burton and his wife were the real and true owners of said lands, but neglected and failed to make inquiry concerning the owners of said property. The above named respondents brought suit against these petitioners, said Marie Halbrecht and said Lloyal M. Burton and Rosalyn R. Burton, in the Circuit Court of St. Louis County, Missouri, asking specific performance of said earnest money contract executed by said Marie Halbrecht and Harry J. Gannon on the 3rd day of February, 1941, pleading equitable estoppel against the defendants, by reason of failure to place said deed of record prior to February 3, 1941. To the Second Amended Petition of the respondents, on which said cause was heard, the petitioners herein and said Burtons, each and all pleaded, among other defenses, actual knowledge on the part of the plaintiffs, and notice sufficient to put them on inquiry and neglect to make said inquiry, lack of authority in said Marie Halbrecht and Harry J. Gannon to enter into said contract,

and further pleaded the statute of frauds contained in the laws of Missouri (Section 3354, Rev. Stat. of Missouri 1939).

The decree of the said Circuit Court, rendered on the 2nd day of August, 1943, upheld said contract between said Lloyal M. Burton and petitioner, John W. Hays, in so far as the same related to the interest of said Burton and his wife in said land, and rendered a judgment in their favor, and against the respondents herein, awarding said Burton and his wife their portion of said land, in accordance therewith, but refused to uphold said contract in so far as the same had regard to the rights and interests of the petitioners in said land, and decreed specific performance against petitioners and vested title to the western two and one-half acres of land and ordered the same transferred to respondent, Catherine Farrington, upon the payment into court for the use and benefit of petitioner, John W. Hays, the sum of \$442.04, and assessed the cost in said cause against petitioner, John W. Hays. And the Court, in said decree, denied the petitioner, Sarah R. Hays, any right or interest in and to said property, and refused to uphold the rights of the petitioners herein as owners of an equitable estate by the entirety in said property by reason of said contract between petitioner, John W. Hays, and said Lloyal M. Burton.

That the evidence adduced at said trial showed that petitioner, Sarah R. Hays, was in the same circumstances and claimed her rights in said property through the same contract as that on which the Court granted affirmative relief to said Burtons, except that petitioner, Sarah R. Hays, had no knowledge of the existence of said contract or of the negotiations carried on for the purchase of said lands, until after the action was brought.

Each of the said defendants, except Marie Halbrecht, duly filed motions for a new trial, but only the petitioners herein appealed from the decision of said Circuit Court in overruling said motions. That these petitioners filed a joint motion for a new trial (Rec., pp. 278 to 282, incl.), in which said motion the following paragraphs appear:

Par. 7 (Rec., pp. 280, 281).

Par. 10 (Rec., p. 281).

Par. 16 (Rec., p. 282).

In which said paragraphs petitioners challenged the denial of their rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States to the equal protection of the laws, and their being denied due process of law, contrary to said section and also the Fifth Amendment to the Constitution of the United States.

Said motion for new trial was overruled by the Circuit Court without written opinion (Rec., p. 282). An appeal to the Supreme Court of Missouri was duly prayed for by these petitioners and was duly allowed (Rec., pp. 282, 283).

This case is brought before this Court for review on the claim of the petitioners that their property rights as beneficiaries under the agreement signed by petitioner, John W. Hays, and Loyal M. Burton, December 20, 1940, have been denied to them by the State of Missouri, while the same or similar rights thereunder were upheld and confirmed to the other beneficiaries of said agreement, although petitioners and said other beneficiaries were in every way in similar circumstances regarding said rights; and petitioners claim that the State of Missouri, by said actions, has denied to them the equal protection of the laws, and has deprived petitioners of their property with-

out due process of law, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States and contrary to the Fifth Amendment thereof.

B.

Reasons Relied on for the Allowance of the Writ.

1. The State of Missouri denied petitioners the equal protection of the laws guaranteed to them by Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that:

(a) The right of the petitioner, Sarah R. Hays, under the terms of the contract dated December 20, 1940, became a vested right upon its execution, delivery to and acceptance by her trustee, Loyal M. Burton. From that time on she was the equitable owner of an estate by the entirety in the western two and one-half acres of the tract of land described in said contract, together with the improvements thereon.

(b) Petitioner, John W. Hays, having parted with his sole right in said lands and having conferred on his wife an estate by the entirety by executing and delivering said agreement to Loyal M. Burton, as trustee for the beneficiaries thereunder, was unable to bind petitioner, Sarah R. Hays, by any act of his not concurred in, or ratified by her.

(c) Said agreement created an irrevocable trust upon delivery to and acceptance by the trustee therein named, and the failure of the Court to uphold the same as to any beneficiary who had not become estopped by his or her conduct from asserting his right thereunder, while upholding and enforcing said agreement as to other beneficiaries similarly situated, was a denial of the equal pro-

tection of the laws to the beneficiaries whose rights were so denied under the same by the Court.

(d) Petitioners challenged the denial of their federal rights in both the Circuit Court and the Supreme Court of Missouri at the earliest possible moment and kept the challenge alive throughout the proceedings, but neither Court gave opinion concerning said federal rights, although it was necessary for the Circuit Court to consider the same in overruling petitioners' motion for a new trial, and for the Supreme Court of Missouri to pass on the same under the assignment of errors and argument before it.

2. The State of Missouri deprived petitioners of their property without due process of law, as guaranteed to them by said section of the Fourteenth Amendment and by the Fifth Amendment to the Constitution of the United States, by failing to apply the statute of frauds of Missouri and the well-settled principles of equity in this state to the facts and circumstances surrounding the property rights of petitioners, while applying said statute and said principles to the other beneficiaries under said trust agreement, who were similarly situated.

In support of the foregoing grounds of application your petitioners submit the accompanying Brief setting forth in detail the precise facts and arguments applicable thereto.

Wherefore, your petitioners pray that the Court, pursuant to United States Judicial Code, Section 237b, as amended by Act of February 13, 1925, 43 Stat. 973, issue a writ of certiorari to review the decree and judgment of the Supreme Court of Missouri in affirming the decree and judgment of the Circuit Court of St. Louis County,

Missouri, decreeing specific performance and divesting the property of the petitioners out of them and vesting the same in Catherine Farrington as aforesaid.

All of which is herewith respectfully submitted this 4th day of December, 1944.

JOHN W. HAYS and
SARAH R. HAYS,

Petitioners.

by GEO. L. VAUGHN,

CHARLES H. HOUSTON,

Attorneys.

